



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 28, 1998

Mr. Ryan Tredway  
Staff Attorney  
Texas Department of Insurance  
Legal and Compliance Division  
MC 110-1A  
Austin, Texas 78714-9104

OR98-1057

Dear Mr. Tredway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114822.

The Texas Department of Insurance (the "department") received a request for information relating to denial of the requestor's credit life and disability license. You contend that the requested documents are excepted from disclosure under sections 552.103 and 552.111 of the Government Code.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). A contested case under the Administrative Procedure Act is litigation for purposes of section 552.103(a). Open Records Decision No. 588 (1991).

You have demonstrated that the department is party to a hearing that was pending before the State Office of Administrative Hearings at the time the department received the request for information. The subject of the hearing is the department's denial of the requestor's license application. This hearing is governed by the Administrative Procedure Act, and, therefore, can be considered pending litigation for purposes of section 552.103(a). *See* 1 T.A.C. § 155.5. Having reviewed the documents at issue, we find that they relate to the hearing. For these reasons, we conclude that the department may withhold the documents from disclosure pursuant to section 552.103(a) of the Government Code.

We note, however, that if the opposing party in the pending litigation has seen or had access to any of the information in these documents, there would be no justification for withholding that information from disclosure pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we are able to resolve this matter under section 552.103, we need not address your section 552.111 claim. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 114822

Enclosures: Submitted documents

cc: Mr. Gregory W. Lakovich  
P.O. Box 1406  
Texas City, Texas 77592  
(w/o enclosures)